Before the **FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Rural Broadband Experiments)	WC Docket No. 14-259
)	
Petition of SJB LLC)	
dba SAN JOAQUIN BROADBAND for)	
Designation as an Eligible Telecommunications)	
Carrier in the State of California)	

To: The Commission

PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF CALIFORNIA

Mike Donnell Chief Executive Officer SJB LLC dba SAN JOAQUIN BROADBAND 5195 Pinyon Jay Road Parker, CO 80134

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PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF CALIFORNIA

SJB LLC dba SAN JOAQUIN BROADBAND ("SJB LLC") pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended ("Act") and Section 54.201 of the rules of the Federal Communications Commission ("FCC" or "Commission") hereby requests designation as an eligible telecommunications carrier ("ETC") in the State of California.

I. PREFACE

By Public Notice dated December 5, 2014, the Bureau provisionally selected Michael D. Donnell dba SAN JOAQUIN BROADBAND's ("SJB") application for Category One Rural Broadband Experiments¹ funding. Subject to submission of additional information and a final determination of SJB's technical and financial qualifications, SJB was to receive \$14,833,187 to

¹ See Public Notice, DA 14-1772 (rel. Dec. 5, 2014) ("Public Notice").

fund construction and operation of fixed broadband and telephone services in 2,585 census blocks in California ("Unserved Blocks").

SJB LLC is the affiliate² within SJB established to meet the broadband public interest obligations required by the Commission within the Unserved Blocks. SJB LLC is requesting an ETC designation in accordance to the Wireline Competition Bureau's provisional grant of funding to SJB for Rural Broadband Experiments for operations in the State of California in WC Docket No. 10-90 ("Provisional Grant"). When applying for the Rural Broadband Experiments ("RBE") it is not required for the entity to hold ETC status,³ but before funds will be granted⁴ it is required for winning bidders to provide appropriate documentation of their ETC designation in each of the areas for which they are provisionally selected to receive support.⁵ SJB LLC requests ETC status for the areas where it has received the Provisional Grant within the State of California in order to fulfill the Bureau's mandate, allowing SJB LLC to operate in a manner consistent with the Bureau's expectations in making the Provisional Grant.

After SJB received the Provisional Grant, SJB LLC sought designation as an ETC from the State of California Public Utilities Commission ("CPUC"). The CPUC has replied that the CPUC lacks jurisdiction to designate SJB LLC as an ETC in the State of California. The

² http://transition.fcc.gov/wcb/FAQ_Rural_Broadband_Experiment.pdf (last viewed Mar 3, 2015) ("RBE FAQ v2") at VI. Conditions for Funding ¶C.

³ Technology Transitions et al., GN Docket No. 13-5 et al., Order et al., 29 FCC Red 1433, 1474, para. 118 (2014) (Technology Transitions Order).

⁴ Connect America Fund; ETC Annual Reports and Certifications, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) ("Rural Broadband Experiments Order") at ¶22.

⁵ *Public Notice* ATTACHMENT B at II. POST-SELECTION REVIEW PROCESS: REQUIRED INFORMATION AND DEADLINES - ¶D. Conditions for Funding Authorization.

following sets forth, pursuant to Section 214(e)(6) of the Act, 47 U.S.C. § 214(e)(6), that the Commission has authority to grant ETC status where the relevant state authority does not have jurisdiction to grant ETC status. Because the CPUC does not have jurisdiction to grant ETC status, the FCC has authority to grant this Petition.

II. SUMMARY OF SJB LLC

SJB LLC is a broadband wireless access company that engineers, deploys and operates affordable, robust and sustainable residential and commercial broadband internet services in rural areas. In the San Joaquin Valley of California, SJB LLC will provide fast (+25Mbps) and reliable internet access along with phone service at a competitive price. Providing the bandwidth to fulfill the customers needs and desires for internet service. Recent technology developments in fixed wireless have made it an ideal solution for providing 25 Mbps internet speeds into rural areas. By leveraging the latest speeds available and the cost-effectiveness of fixed wireless SJB LLC will use its network of 45 towers outfitted with the latest fixed wireless equipment to provide a competitive product, maintained and operated by a local workforce.

III. THE FCC HAS AUTHORITY TO AWARD AN ETC DESIGNATION

Section 214(e)(6) of the Act grants the FCC authority to designate a carrier as an ETC when such carrier is "not subject to the jurisdiction of a state commission." On December 18, 2014, SJB LLC filed a request with the CPUC for an ETC designation in California. Instead of granting the requested ETC designation, the CPUC staff instructed SJB LLC to write a letter to the CPUC Legal Division requesting a statement that the CPUC has not exerted jurisdiction over VoIP (Voice over Internet Protocol) or WISP (Wireless Internet Service Provider) operators. As

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⁶ 47 U.S.C. § 214(e)(6).

instructed, SJB LLC submitted a letter with this request to the CPUC Legal Division on January 14, 2015. Subsequently, 35 days later, on February 23, 2015, the CPUC responded with a letter confirming that the CPUC

has not asserted jurisdiction over WISPs, and is barred by state law from exercising jurisdiction over VoIP providers. Specifically, Public Utilities Code Section 710 states that "the commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services" except as "required" by federal law or expressly directed to do so by state statute.

A copy of the CPUC decision is attached as Exhibit A. The CPUC found that it does not hold authority to grant SJB LLC the requested ETC status. In accordance with the CPUC's decision, SJB LLC herein requests that the Commission exercise its statutory authority under Section 214(e)(6) of the Act to grant SJB LLC an ETC designation for the SJB LLC service areas in the State of California.

IV. SJB LLC MEETS THE REQUIREMENTS TO BE DESIGNATED AS AN ETC

As follows, SJB LLC satisfies the requirements set forth under 47 U.S.C. §214 (e) and the FCC rules for designation as an ETC.⁷

Particularly, SJB LLC agrees to:

- 1) Offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services;⁸
- 2) Advertise the availability of such services and the charges therefor using media of general distribution;⁹

⁷ 47 C.F.R. §§ 54.20 I (d) and 54.202.

^{8 47} C.F.R. § 54.20J(d)(1).

⁹ 47 C.F.R. § 54.20J(d)(2).

- 3) Certify that it will comply with the service requirements applicable to the support that it receives;¹⁰
- 4) Provide information that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area;¹¹
- 5) Demonstrate its ability to remain functional in emergency situations;¹²
- 6) and, Demonstrate that it will satisfy applicable consumer protection and service quality standards.¹³

SJB LLC's compliance with each of the applicable requirements to obtain designation as an ETC is discussed in further detail below.

1) SJB LLC will offer services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services.

Upon confirmation of receiving funding through the FCC's RBE program, SJB LLC will deploy and operate a broadband wireless access network utilizing its own facilities throughout the service area within which SJB LLC seeks ETC designation. SJB LLC's wireless access network is designed to provide broadband and voice over the internet services to residential and small business customers in the area of San Joaquin Valley of California covering the designated census blocks in the SJB RBE application. The deployment will use unlicensed spectrum in the industrial, scientific and medical (ISM) radio bands of 2.4 GHz and 5.8 GHz, providing "last mile" broadband access to the targeted Unserved Blocks. SJB LLC's broadband access network

¹⁰ 47 C.F.R. § 54.202(a)(l)(i).

¹¹ 47 C.F.R. § 54.202(a)(J)(ii).

¹² 47 C.F.R. § 54.202(a)(2).

¹³ 47 C.F.R. § 54.202(a)(3).

will extend broadband connectivity from the existing Centurylink and Level3 networks to the local service areas. The SJB LLC wireless network will provide constant broadband access for SJB LLC's customer's home, business or other service locations in the service area. In addition, SJB LLC will offer residential and small business voice services, reselling a white label wholesale voice service. At the beginning, SJB LLC will offer Lifeline voice services to any customer that qualifies for such services where SJB LLC is granted an ETC designation. As such, SJB satisfies the requirement that it will offer the services supported by the Federal universal service support mechanisms by utilizing its own facilities in conjunction with reselling other carrier's offering. Such offerings will be available throughout the service area where SJB LLC has received an ETC designation.

2) SJB LLC will advertise the availability of its services and the charges therefor using media of general distribution.

SJB LLC will support its service offering, including Lifeline services, with a local sales, service and technical support staff that will actively sell services to the local communities within which the network is deployed. The company will actively engage homeowners and businesses at community meetings and home association meetings. as well as meet with county officials and other local and community organizations within the identified service area. SJB LLC's products will be promoted and advertised online at the company website, where interested consumers will be able to review the product line, features and pricing. The website will also provide service coverage information as the network is expanded over the targeted service areas and will contain information on SJB LLC's voice service offering. The company's marketing strategy incorporates neighborhood marketing campaigns using door hangers, inserts into community

newsletters, general media advertising, direct mail, as well as public relations efforts with local news outlets.

3) <u>SJB LLC certifies that it will comply with the service requirements applicable to the support that SJB LLC receives.</u>

SJB has shown its compliance with the FCC's requirements set forth within the RBE program, with the technical information contained in SJB's initial bid and with the Form 5620 Technical Review Document submitted during the post-selection review process. SJB LLC will provide any additional information requested by the Commission.

4) SJB has provided information that describes with specificity proposed improvements or upgrades to SJB LLC's network throughout its proposed service area.

SJB has submitted comprehensive information and detailed timeframes of planned improvements and upgrades associated with the network build out in relation to the FCC's RBE. The requirement to submit a five year plan has been waived in connection to grants connected with the RBE program. In the RBE Order, the FCC reasoned that stated

"[b]ecause we adopt other requirements for the rural broadband experiments recipients that will ensure that we will be kept apprised of their build-out progress, we find that it is unnecessary to require these entities to file a five-year service quality plan."¹⁴

If requested, SJB LLC will provide the Commission with any additional information concerning SJB LLC's network design plans for servicing the ETC designation area.

5) SJB LLC's services will have the ability to remain functional in emergency situations.

SJB LLC will design and operate its network in manner which maintains its service levels and operation during emergency situations. This includes, and is not limited to the following

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¹⁴ Rural Broadband Experiments Order ¶77.

considerations and designs, each of which is engineered to mitigate issues relating to power outages and other emergency situations:

- Back-Up Power: All SJB LLC network locations will be fitted with on-site battery backup systems capable of providing standard operation for a minimum of 24 hours during a loss of commercial utility service. Each location will be equipped to accommodate a portable power generator that can be dispatched and maintained in the event a commercial utility outage is expected to last longer than 24 hours. The portable generators will be pre-staged and staffed locally to reduce the required dispatch time. Fuel sources and fuel storage will be pre-arranged to handle extended outages. All portable generators will be periodically tested to ensure readiness.
- Network Reliability: All wireless facilities in the SJB LLC network will be engineered and built to meet the TIA / EIA-222--Rev G structural standards for 130 MPH 3 Second wind gusts. SJB LLC's backbone network providers employ fiber ring architecture to allow for increased uptime and fast restoration during network events. The SJB LLC network is based on an Internet Protocol (IP) transport technology. The network will be engineered to take advantage of the automatic re-routing capability of IP to allow automatic recovery during fiber outages.
- **Support Personnel:** SJB LLC will employ local personnel with emergency training and equipment to respond as needed during emergency events. Network regions will be equipped with adequate spares to restore service promptly during an outage.
- Collaboration: SJB LLC will utilize other competitive network providers and incumbent Local Exchange Carriers to complete voice calls. These carriers employ

industry standard practices to deliver emergency 911 and operator traffic during network emergency events. In the event of 911 or Operator call failures. SJB LLC's Network Operations Center (NOC) will be automatically alerted and will take steps to resolve the failures via remote rerouting of the traffic.

- Traffic Congestion During Emergency Situations: SJB LLC's network will be
 engineered to transport IP traffic to a minimum of two major internet peering locations.

 In the event of network congestion for any reason, traffic will automatically flow in and
 out of SJB LLC's network under this arrangement. In catastrophic situations, SJB LLC's
 NOC will be alerted to blocked traffic situations and will have the ability to remotely
 configure alternate IP traffic routes to relieve any outage.
- 6) SJB LLC will comply with consumer protection and quality of service standards.

SJB LLC commits to satisfying all applicable state and federal requirements relating to consumer protection and quality of service standards. SJB LLC will utilize a wireless access network designed to provide broadband and voice equivalent services to residential and small business customers in the San Joaquin Valley of California covering the Unserved Blocks in the SJB RBE application. SJB LLC agrees to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Services. SJB LLC will offer residential and small business voice services through a leading wholesale white label voice provider.

V. IT IS IN THE PUBLIC INTEREST TO GRANT SJB LLC STATUS AS AN ETC

In establishing the RBE program, the FCC stated that it was in the public interest to advance the deployment of voice and broadband-capable networks in rural, high-cost areas. In relation to that program, the FCC determined that the Commission "would encourage

participation in the rural broadband experiments from a wide range of entities"¹⁵ and that entities "need not be ETCs at the time they initially submit their formal proposals for funding through the rural broadband experiments".¹⁶ In order to best utilize the existing Connect America budget and to extend broadband to as many households as possible, the Commission awarded a Provisional Grant to SJB, concluding that SJB's proposal was among the most cost-effective proposals submitted, and that SJB LLC network was compliant with the program's technical requirements.

Granting an ETC designation to SJB LLC serves the public interest because it will result in the expansion of rural broadband deployment by allowing SJB access to the funds allocated through the Provisional Grant. SJB has already undergone an intense review by the FCC of its technical and financial qualification to provide services as part the vetting process in the RBE program. By granting SJB the Provisional Grant, the FCC has therefore found SJB qualified and identified SJB's planned network as a cost effective way to expand broadband and voice services in rural areas. Deployment of SJB LLC's network would therefore further the public interest.

Without ETC status SJB LLC cannot proceed with the deployment of its network through the RBE program. As the Commission is aware, ETC designation is a required component of the RBE program. Therefore if ETC status is not granted to SJB LLC, the cost efficiencies identified by the FCC to be realized through SJB's planned network in California would be jeopardized. Granting SJB LLC status as an ETC therefore would advance the public interest goals as stated by the FCC and foster the expansion of broadband deployment in rural California.

¹⁵ Rural Broadband Experiments Order ¶21 (referencing the *Technology Transitions Order*).

¹⁶ Rural Broadband Experiments Order ¶22.

VI. ANTI-DRUG ABUSE CERTIFICATION

SJB LLC certifies that no party to this Petition is subject to denial of federal benefits,

including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

VII. **CONCLUSION**

As discussed above, the FCC has the authority to designate SJB LLC as an ETC in

California. SJB LLC meets all of the requirements set forth in statute and in the rules of the FCC

for designation as an ETC. Such designation serves the public interest by expanding the

availability of communications services in rural California. Therefore, SJB LLC respectfully

requests that the Commission designate SJB LLC as an ETC in California in the areas specified

herein.

Respectfully submitted,

SJB LLC dba

SAN JOAQUIN BROADBAND

By: /s/ Michael D. Donnell

Mike D. Donnell

Chief Executive Officer

5195 Pinyon Jay Road

Parker, CO 80134

Dated: March 5, 2015

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Exhibit A

Letter from CPUC Evidencing State of California Lacks Jurisdiction

PUBLIC UTILITIES COMMISSION 505 VAN NESS AVENUE SAN FRANCISCO, CA 94102-3298



February 23, 2015

VIA U.S. MAIL AND EMAIL

Mr. Michael Donnell SJB LLC dba San Joaquin Broadband 5195 Pinyon Jay Road Parker, CO 80134

Dear Mr. Donnell:

This is in response to your letter dated January 14, 2015, in which you request a statement from the California Public Utilities Commission (CPUC or Commission) that it has not exerted jurisdiction over Voice over Internet Protocol (VoIP) providers and/or Wireless Internet Service Providers (WISPs).

Discussion

You represent San Joaquin Broadband, a WISP that has bid on broadband projects in the San Joaquin Valley under the Connect America Fund (CAF) Rural Broadband Experiment. The Federal Communications Commission (FCC) requires bidders to provide documentation of their eligible telecommunications carrier (ETC) designation.

The CPUC normally would designate an applicant as an ETC, provided the Commission has jurisdiction over the carrier seeking ETC designation. Here, however, the Commission has not asserted jurisdiction over WISPs, and is barred by state law from exercising jurisdiction over VoIP providers.

Specifically, Public Utilities Code Section 710 states that "the commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services" except as "required" by federal law or expressly directed to do so by state statue. While there are some exceptions in Section 710, none of those exceptions allow the CPUC to confer operating authority on VoIP providers unless such providers are also offering traditional telephone services.

Further, in 2002, the Federal Communications Commission (FCC) determined that

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internet access service provided by an ISP is an "information service," and not a "telecommunications service." (See *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities,* Declaratory Ruling and Notice of Proposed Rulemaking (2002) 17 FCC Rcd 4798; 2002 FCC LEXIS 4534.) The United States Supreme Court affirmed the FCC's decision in *National Cable & Telecommunications Ass'n v. Brand X Internet Services* (2005) 545 U.S. 967. Therefore, the FCC has jurisdiction over ISPs.

In addition, the Commission itself has indicated that it would not assert jurisdiction over VoIP. In 2006, the Commission closed an investigation into the regulatory treatment of VoIP, stating:

"Since the FCC has determined that it is charged with that role and is exercising its authority, we conclude that it is premature for us to assess what our regulatory role over VoIP will be and to address the issues raised in this investigation."

The Commission has not since revisited this ruling in any formal proceeding.

Finally, the Commission has stated in a number of rulings that it does not have jurisdiction over broadband. (See, e.g., Resolution T-17143 at p. 14, fn. 10 ["Broadband service is not regulated by the Commission but by federal authorities."].)

Conclusion

For the foregoing reasons, the CPUC cannot designate a WISP or a VoIP provider as an ETC. Therefore, we believe your only recourse is to go directly to the FCC for an ETC designation.

This opinion is an informal response written by the Commission's Legal Division staff and is not binding on the Commission, which only issues formal opinions through its proceedings. Please contact me if you have any further questions.

Sincerely,

/s/ JUDITH ALLEN

Judith Allen

Staff Counsel